

Draft

STATE HOUSING APPEALS BOARD

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Minutes of the November 24, 2009 Board Meeting

The State Housing Appeals Board (“SHAB” or the “Board”) held a public meeting on November 24, 2009 at the Warwick City Hall.

ATTENDANCE

The following members attended the meeting: Steve Ostiguy, Charles Maynard, Donald Goodrich, Cynthia Fagan, and Mary Shekarchi, Esq., Chair. Also present were Steven M. Richard, legal counsel to the SHAB, Katherine Maxwell, and Karen Slavin, administrative staff to the SHAB.

Chairwoman Shekarchi called the meeting to order at 2:07 p.m.

Mr. Richard questioned Ms. Maxwell on the status of SHAB membership. Ms. Maxwell confirmed membership qualifications and

membership status. Mr. Richard restated and clarified SHAB quorum requirements.

AGENDA ITEMS

1. Approval of minutes of SHAB's June 24, 2009 meeting

Mr. Ostiguy moved to accept the minutes. Mr. Goodrich seconded. Motion passed unanimously.

2. Approval of SHAB's written decision on the Atlantic East v. Town of Narragansett appeal.

Ms. Shekarchi moved to accept the decision as drafted. Mr. Maynard seconded. Motion passed unanimously.

3. Docket Update by SHAB's Legal Counsel.

Mr. Richard reported that SHAB's decision on the matter of Clark's Falls v. Hopkinton was being appealed in Superior Court. In addition the Supreme Court has set a briefing schedule in the S.W.A.P. v. West Greenwich appeal from SHAB's decision. Mr. Richard also noted the fact that approximately half dozen appeals to SHAB were pending

and the Board should be prepared to meet regularly, perhaps monthly during the winter and spring.

4. Pesaturo and Gemma v. Town of Cumberland SHAB appeal # 2008-04.

Representing the developer, Attorney Lamagna argued that the town's denial of the comprehensive permit resulted from a reluctance on the part of the local review board to exercise its authority to grant a permit to a mixed-use development. Mr. Lamagna also argued that the town was not implementing its affordable housing plan because no affordable housing units have been constructed in several years. Mr. Lamagna maintained that it was SHAB's role to help insure that affordable housing units were created and not just planned, so the denial of this permit was unreasonable.

For the Town, Mr. Hefner countered pointing out that the Town was focusing on implementing its plan which had been written in a manner that would provide sufficient units within selected areas. He further contended that the subject comprehensive permit application was, in effect, a request for a zone change from residential to commercial mixed use and that was the reason that the local review board had declined to approve the application. The SHAB members questioned Mr. Hefner about the Town's interpretation of allowable residential density bonuses within areas described in the plan and

those outside of locations described in the Plan. Further questioning from SHAB members established that a zone change to commercial use for the subject land had previously been denied by the Town Council. Mr. Hefner asserted that the commercial elements of the Pesaturo proposal constituted the criteria the SHAB should consider when reviewing the Town's denial. He further stated his belief that the SHAB statute did not grant it the authority to change a residential use to a commercial use.

On behalf of the appellant, Mr. Lamagna stated that in the Cumberland Comprehensive Plan, the subject parcel was designated commercial but the zoning remained residential. He further argued that the Cumberland local review board had the authority to grant permits required to advance affordable housing.

Upon completion of oral arguments the SHAB deliberated the question of whether the local review board acted consistently or inconsistently with its approved affordable housing plan. SHAB members considered record evidence that the local board weighed the proportion of residential and commercial used in the proposed development. Ms. Fagan moved to find that the local review board acted consistently with its affordable housing plan in considering the application. Motion carried.

The SHAB next considered whether the local review board had made adequate findings on the merits of the proposal to support their

denial. Discussion of the local transcripts indicated that the local review board considered the number of affordable units to be gained was insufficient when compared to the area proposed to be predominately commercial. The SHAB deliberated further and found that the planning board should have considered additional factors relating to their decision, beyond the zoning of the property. On further deliberation concerning the local record, SHAB determined that,

notwithstanding that the local board could have considered other factors to support its decision, the local review board was within its statutory authority to deny the application because it was deemed inconsistent with the approved affordable housing plan. Mr. Goodrich moved to affirm the local decision denying the application. Motion carried unanimously.

Adjournment

The meeting adjourned at 4:41 p.m.

Respectfully submitted,

Mary B. Shekarchi, Esq.

Chairperson

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